

# Senate Study Bill 1142

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
HUMAN RESOURCES BILL BY  
CHAIRPERSON RAGAN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the classification and assessment of  
2 violations in health care facilities and assisted living  
3 programs and providing penalties.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 1570XC 83  
6 jr/nh/5

PAG LIN

1 1 Section 1. NEW SECTION. 135C.16A INSPECTORS == CONFLICTS  
1 2 OF INTEREST.

1 3 An inspector of the department shall be free of conflicts  
1 4 of interest. Any of the following circumstances constitutes a  
1 5 conflict of interest and disqualifies an inspector from  
1 6 inspecting a health care facility under this chapter:

1 7 1. The inspector currently works, or within the past five  
1 8 years has worked, as an employee, a temporary employee at the  
1 9 facility pursuant to an agreement with an employment agency,  
1 10 or an officer, consultant, or agent for the facility to be  
1 11 surveyed.

1 12 2. The inspector has any financial interest or any  
1 13 ownership interest in the facility. For purposes of this  
1 14 subsection, indirect ownership, such as through a broad-based  
1 15 mutual fund, does not constitute financial or ownership  
1 16 interest.

1 17 3. The inspector has an immediate family member who  
1 18 currently resides or previously resided in or received care  
1 19 from a facility. For purposes of this section, "immediate  
1 20 family member" shall be defined as set forth in 42 C.F.R. }  
1 21 488.301 and includes a husband or wife; natural or adoptive  
1 22 parent, child, or sibling; stepparent, stepchild, stepbrother,  
1 23 or stepsister; father-in-law, mother-in-law, son-in-law,  
1 24 daughter-in-law, brother-in-law, or sister-in-law; and  
1 25 grandparent or grandchild.

1 26 Sec. 2. Section 135C.19, subsection 2, unnumbered  
1 27 paragraph 1, Code 2009, is amended to read as follows:

1 28 A citation for a class I, ~~or class II, or class III~~  
1 29 violation which is issued to a health care facility and which  
1 30 has become final, or a copy of the citation, shall be  
1 31 prominently posted as prescribed in rules, until the violation  
1 32 is corrected to the department's satisfaction. The citation  
1 33 or copy shall be posted in a place in plain view of the  
1 34 residents of the facility cited, persons visiting the  
1 35 residents, and persons inquiring about placement in the  
2 1 facility.

2 2 Sec. 3. Section 135C.36, Code 2009, is amended to read as  
2 3 follows:

2 4 135C.36 VIOLATIONS CLASSIFIED == PENALTIES.

2 5 1. Every violation by a health care facility of any  
2 6 provision of this chapter or of the rules adopted pursuant to  
2 7 it shall be classified by the department in accordance with  
2 8 this section. The department shall adopt and may from time to  
2 9 time modify, in accordance with chapter 17A, rules setting  
2 10 forth so far as feasible the specific violations included in  
2 11 each classification and stating criteria for the  
2 12 classification of any violation not so listed.

2 13 ~~1. a.~~ A Class I violation is one which ~~presents an~~  
~~2 14 imminent danger or a substantial probability of resultant~~  
~~2 15 death or physical harm to the residents of the facility in~~  
~~2 16 which the violation occurs results in death or serious injury,~~  
2 17 as defined in section 702.18, due to intentional or reckless

~~2 18 disregard by the facility of a provision of this chapter or a~~  
~~2 19 rule of the department. A physical condition or one or more~~  
~~2 20 practices in a facility may constitute a Class I violation. A~~  
~~2 21 Class I violation shall be abated or eliminated immediately~~  
~~2 22 unless the department determines that a stated period of time,~~  
~~2 23 specified in the citation issued under section 135C.40, is~~  
~~2 24 required to correct the violation. A licensee is subject to a~~  
~~2 25 penalty of not less than ~~two one~~ thousand nor more than ~~ten~~~~  
~~2 26 ~~twenty~~ thousand dollars for each Class I violation for which~~  
~~2 27 the licensee's facility is cited.~~  
~~2 28 2. b. A Class II violation is one which has a direct or~~  
~~2 29 immediate relationship to the health, safety or security of~~  
~~2 30 residents of a health care facility, but which presents no~~  
~~2 31 imminent danger nor substantial probability of death or~~  
~~2 32 physical harm to them presents an imminent danger or~~  
~~2 33 substantial probability of resultant death or serious injury,~~  
~~2 34 as defined in section 702.18, to a resident of the facility in~~  
~~2 35 which the violation occurs and is a serious violation of a~~  
~~3 1 provision of this chapter or a rule of the department. The~~  
~~3 2 department shall adopt rules to establish the factors that~~  
~~3 3 will be considered in determining a serious violation. A~~  
~~3 4 physical condition or one or more practices within a facility,~~  
~~3 5 including either physical abuse of any resident or failure to~~  
~~3 6 treat any resident with consideration, respect and full~~  
~~3 7 recognition of the resident's dignity and individuality, in~~  
~~3 8 violation of a specific rule adopted by the department, may~~  
~~3 9 constitute a Class II violation. A violation of section~~  
~~3 10 135C.14, subsection 8, or section 135C.31 and rules adopted~~  
~~3 11 under those sections shall be at least a Class II violation~~  
~~3 12 and may be a Class I violation. A Class II violation shall be~~  
~~3 13 corrected within a stated period of time determined by the~~  
~~3 14 department and specified in the citation issued under section~~  
~~3 15 135C.40. The stated period of time specified in the citation~~  
~~3 16 may subsequently be modified by the department for good cause~~  
~~3 17 shown. A licensee is subject to a penalty of not less than~~  
~~3 18 one ~~hundred thousand~~ nor more than ~~five hundred twenty~~~~  
~~3 19 ~~thousand~~ dollars for each Class II violation for which the~~  
~~3 20 licensee's facility is cited, however the director may waive~~  
~~3 21 the penalty if the violation is corrected within the time~~  
~~3 22 specified in the citation.~~  
~~3 23 3. c. A Class III violation is any violation of this~~  
~~3 24 chapter or of the rules adopted pursuant to it which violation~~  
~~3 25 is not classified in the department's rules nor classifiable~~  
~~3 26 under the criteria stated in those rules as a Class I or a~~  
~~3 27 Class II violation a violation which has a direct or immediate~~  
~~3 28 relationship to the health, safety, or security of residents~~  
~~3 29 of a health care facility, and may present physical harm to~~  
~~3 30 them. A licensee shall not be subject to a penalty for a~~  
~~3 31 Class III violation, except as provided by section 135C.40,~~  
~~3 32 subsection 1 for failure to correct the violation within a~~  
~~3 33 reasonable time specified by the department in the notice of~~  
~~3 34 the violation. A physical condition of the facility or one or~~  
~~3 35 more practices within a facility, including either physical~~  
~~4 1 abuse of any resident or failure to treat any resident with~~  
~~4 2 consideration, respect, and full recognition of the resident's~~  
~~4 3 dignity and individuality, in violation of a specific rule~~  
~~4 4 adopted by the department, may constitute a Class III~~  
~~4 5 violation. The director shall waive the fine if the violation~~  
~~4 6 is corrected within the time specified in the citation. The~~  
~~4 7 stated period of time specified in the citation may~~  
~~4 8 subsequently be modified by the department for good cause~~  
~~4 9 shown. If the facility fails to correct the violation within~~  
~~4 10 the time specified in the citation, the facility may be fined~~  
~~4 11 not less than fifty dollars nor more than two hundred fifty~~  
~~4 12 dollars for each Class III violation for which the licensee's~~  
~~4 13 facility is cited.~~  
~~4 14 d. A Class IV violation is any violation of this chapter~~  
~~4 15 or of the rules adopted pursuant to this chapter, which~~  
~~4 16 violation is not classifiable under the criteria stated in~~  
~~4 17 those rules as a Class I, Class II, or Class III violation. A~~  
~~4 18 licensee shall not be subject to a penalty for a Class IV~~  
~~4 19 violation except as provided by section 135C.40, subsection 1,~~  
~~4 20 for failure to correct the violation within a reasonable time~~  
~~4 21 specified by the department in the notice of the violation.~~  
~~4 22 2. a. Failure to treat any resident with consideration,~~  
~~4 23 respect, and full recognition of the resident's dignity and~~  
~~4 24 individuality in violation of a specific rule adopted by the~~  
~~4 25 department, may constitute either a Class III or Class IV~~  
~~4 26 violation.~~  
~~4 27 b. A violation of section 135C.14, subsection 8, or~~  
~~4 28 section 135C.31, and rules adopted under those sections shall~~

4 29 be at least a Class III violation and may be a Class II  
4 30 violation.

4 31 3. Any state penalty, including a fine or citation, issued  
4 32 as a result of the federal survey and certification process  
4 33 shall be dismissed if the federal deficiency or citation is  
4 34 dismissed or removed.

4 35 4. If a facility self-identifies a deficient practice and  
5 1 corrects such practice prior to completion of an inspection,  
5 2 no citation shall be issued or fine assessed.

5 3 5. The department shall consider and apply all factors set  
5 4 out in departmental rules relating to the classification of  
5 5 violations before determining the class of violation.

5 6 Sec. 4. Section 135C.40, subsection 1, Code 2009, is  
5 7 amended to read as follows:

5 8 1. If the director determines, based on the findings of an  
5 9 inspection or investigation of a health care facility, that  
5 10 the facility is in violation of this chapter, or rules adopted  
5 11 under this chapter, or the federal certification guidelines,

5 12 the director within ~~five ten~~ working days after ~~making the~~  
5 13 ~~determination completion of an on-site inspection, may shall~~  
5 14 ~~issue a written citation all statements and deficiencies,~~  
5 15 ~~including any state citations issued to the facility under~~

5 16 ~~rules adopted by the department.~~ The citation shall be served  
5 17 upon the facility personally ~~or, by electronic mail, or by~~

5 18 certified mail, except that a citation for a Class ~~III IV~~  
5 19 violation may be sent by ordinary mail. Each citation shall  
5 20 specifically describe the nature of the violation, identifying  
5 21 the Code section or subsection or the rule or standard  
5 22 violated, and the classification of the violation under

5 23 section 135C.36. Where appropriate, the citation shall also  
5 24 state the period of time allowed for correction of the  
5 25 violation, which shall in each case be the shortest period of  
5 26 time the department deems feasible. Failure to correct a

5 27 violation within the time specified, unless the licensee shows  
5 28 that the failure was due to circumstances beyond the  
5 29 licensee's control, shall subject the facility to a further  
5 30 penalty of fifty dollars for each day that the violation  
5 31 continues after the time specified for correction.

5 32 a. If a facility licensed under this chapter submits a  
5 33 plan of correction relating to a statement of deficiencies or  
5 34 a response to a citation issued under rules adopted by the  
5 35 department and the department elects to conduct an on-site

6 1 revisit inspection, the department shall commence the revisit  
6 2 inspection within ten business days of the date that the plan  
6 3 of correction is received, or the date specified within the  
6 4 plan of correction alleging compliance, whichever is later.

6 5 b. If the department recommends the issuance of federal  
6 6 remedies pursuant to 42 C.F.R. } 488.406(a)(2) or (a)(3),  
6 7 relating to an inspection conducted by the department, the  
6 8 department shall issue the statement of deficiencies within

6 9 twenty-four hours of the date that the centers for Medicare  
6 10 and Medicaid services of the United States department of  
6 11 health and human services was notified of the recommendation  
6 12 for the imposition of remedies.

6 13 Sec. 5. Section 135C.41, Code 2009, is amended to read as  
6 14 follows:

6 15 135C.41 LICENSEE'S RESPONSE TO CITATION.

6 16 Within twenty business days after service of a citation  
6 17 under section 135C.40, a facility shall either:

6 18 1. If it does not desire to contest the citation, do one  
6 19 of the following, as appropriate:

6 20 a. Remit to the department the amount specified by the  
6 21 department pursuant to section 135C.36 as a penalty for each  
6 22 Class I or Class II violation cited, and for each Class ~~II III~~  
6 23 violation unless the citation specifically waives the penalty,  
6 24 which funds shall be paid by the department into the state  
6 25 treasury and credited to the general fund ~~or,~~

6 26 b. In the case of a Class ~~II III~~ violation for which the  
6 27 penalty has been waived in accordance with the standards  
6 28 prescribed in section 135C.36, subsection ~~2~~ 1, paragraph "c",  
6 29 or a Class ~~III IV~~ violation, send to the department a written  
6 30 response acknowledging that the citation has been received and  
6 31 stating that the violation will be corrected within the  
6 32 specific period of time allowed by the citation ~~or,~~

6 33 2. Notify the director that the facility desires to  
6 34 contest the citation and, ~~in the case of citations for Class~~  
6 35 ~~II or Class III violations, whether the licensee wishes to~~

7 1 request an informal conference with a representative of the  
7 2 department.

7 3 Sec. 6. Section 135C.42, Code 2009, is amended by striking  
7 4 the section and inserting in lieu thereof the following:

7 5 135C.42 INFORMAL CONFERENCE ON CONTESTED CITATION.

7 6 1. A facility, including a facility certified under the  
7 7 federal Medicare or Medicaid program, may request from the  
7 8 director, in writing, an informal conference on a contested  
7 9 citation for any deficiency citation issued pursuant to  
7 10 section 135C.40. The director shall transmit such request to  
7 11 the reviewer within ten working days after receipt of a  
7 12 request made under section 135C.41, subsection 2.

7 13 2. The facility must specify in its written request each  
7 14 deficiency citation that it disputes. The department shall  
7 15 appoint an independent reviewer to whom the parties shall  
7 16 submit the issues raised, who shall conduct the informal  
7 17 conference. The selection of the reviewer shall be done in  
7 18 consultation with providers and advocates under this chapter.  
7 19 The facility and the department shall have the right to be  
7 20 represented by an attorney.

7 21 3. The reviewer appointed shall be wholly independent from  
7 22 the department and shall not be employed by the department nor  
7 23 be subject to employment review by the director of the  
7 24 department.

7 25 4. The reviewer shall be an attorney licensed to practice  
7 26 law in the state of Iowa and shall have experience with and  
7 27 knowledge of the laws, rules, and federal regulations  
7 28 pertaining to long-term care including the conditions for  
7 29 participation in Medicare and Medicaid programs.

7 30 5. An informal conference held pursuant to this section  
7 31 shall be held simultaneously with the informal dispute  
7 32 resolution set out in 42 C.F.R. } 488.331.

7 33 6. The department and the facility may present written  
7 34 evidence, depositions, and oral statements and arguments at  
7 35 the informal conference. Oral statements and arguments may be  
8 1 made by telephone.

8 2 7. Once a request for an informal conference is submitted,  
8 3 a hearing on the matter shall be held within forty-five days  
8 4 if a federal sanction is imposed and within ninety days if a  
8 5 state sanction is imposed.

8 6 8. Within ten working days of the close of the proceeding,  
8 7 the reviewer shall issue written findings regarding each of  
8 8 the deficiencies in dispute. The findings shall be one or  
8 9 more of the following:

8 10 a. Supported in full. The citation is supported in full,  
8 11 with no deletion of findings and no change in the scope or  
8 12 severity assigned to the deficiency citation.

8 13 b. Supported in substance. The citation is supported, but  
8 14 one or more findings are deleted without any change in the  
8 15 scope or severity assigned to the deficiency.

8 16 c. Deficient practice cited under incorrect requirement of  
8 17 participation. The citation is amended by moving it to the  
8 18 correct requirement of participation. The facility shall be  
8 19 afforded a second informal conference on the new requirement  
8 20 of participation.

8 21 d. Scope not supported. The citation is amended through a  
8 22 change in the scope assigned to the citation.

8 23 e. Severity not supported. The citation is amended  
8 24 through a change in the severity assigned to the citation.

8 25 f. No deficient practice. The citation is dismissed  
8 26 because the findings did not support the citation or the  
8 27 negative resident outcome was unavoidable.

8 28 9. If the facility does not desire to further contest an  
8 29 affirmed or modified citation, it shall within five working  
8 30 days after the informal conference, or after receipt of the  
8 31 written findings of the reviewer, as the case may be, comply  
8 32 with section 135C.41, subsection 1.

8 33 10. The authority of the director to overrule informal  
8 34 conference decisions by a reviewer is as follows:

8 35 a. The director shall only reject or modify a finding of  
9 1 fact if the director first determines from a review of the  
9 2 entire record, and states with particularity in the order,  
9 3 that the findings of fact were clearly erroneous in view of  
9 4 the reliable, probative, and substantial evidence on the  
9 5 record as a whole, or that the informal conference did not  
9 6 comply with the essential requirements of the law.

9 7 b. The director shall only reject or modify the  
9 8 conclusions of law if the director first determines from a  
9 9 review of the entire record, and states with particularity in  
9 10 the order, that the conclusion of law was clearly erroneous in  
9 11 view of the reliable, probative, and substantial evidence on  
9 12 the record as a whole and the relevant case law.

9 13 c. Rejection or modification of conclusions of law shall  
9 14 not form the basis for rejection or modification of the  
9 15 findings of fact.

9 16 Sec. 7. Section 135C.43, Code 2009, is amended to read as  
9 17 follows:

9 18 135C.43 FORMAL CONTEST == JUDICIAL REVIEW.

9 19 1. A facility which desires to ~~contest a citation for a~~  
9 20 ~~Class I violation, or to further contest an affirmed or~~  
9 21 ~~modified citation for a Class I, Class II, or Class III, or~~  
9 22 ~~Class IV violation, may do so in the manner provided by~~  
9 23 ~~chapter 17A for contested cases. Notice of intent to formally~~  
9 24 ~~contest a citation shall be given the department in writing~~  
9 25 ~~within five days after service of a citation for a Class I~~  
9 26 ~~violation, or within five days after the informal conference~~  
9 27 ~~or after receipt of the written explanation of the~~  
9 28 ~~representative delegated to hold the informal conference,~~  
9 29 ~~whichever is applicable, in the case of an affirmed or~~  
9 30 ~~modified citation for a Class I, Class II, or Class III, or~~  
9 31 ~~Class IV violation. A facility which has exhausted all~~  
9 32 ~~adequate administrative remedies and is aggrieved by the final~~  
9 33 ~~action of the department may petition for judicial review in~~  
9 34 ~~the manner provided by chapter 17A.~~

9 35 2. Hearings on petitions for judicial review brought under  
10 1 this section shall be set for trial at the earliest possible  
10 2 date and shall take precedence on the court calendar over all  
10 3 other cases except matters to which equal or superior  
10 4 precedence is specifically granted by law. The times for  
10 5 pleadings and for hearings in such actions shall be set by the  
10 6 judge of the court with the object of securing a decision in  
10 7 the matter at the earliest possible time.

10 8 Sec. 8. Section 135C.44, Code 2009, is amended to read as  
10 9 follows:

10 10 135C.44 TREBLE FINES FOR REPEATED VIOLATIONS.

10 11 The penalties authorized by section 135C.36 shall be  
10 12 trebled for a second or subsequent ~~Class I, or Class II, or~~  
10 13 ~~Class III violation occurring within any twelve-month period~~  
10 14 ~~if a citation was issued for the same Class I, or Class II, or~~  
10 15 ~~Class III violation occurring within that period and a penalty~~  
10 16 ~~was assessed therefor.~~

10 17 Sec. 9. Section 231C.2, Code 2009, is amended by adding  
10 18 the following new subsections:

10 19 NEW SUBSECTION. 2A. "Change in condition" means a major  
10 20 decline or improvement in a tenant's status that lasts for a  
10 21 period of more than fourteen days, does not resolve itself  
10 22 without further interventions by staff, has an impact on more  
10 23 than one area of the tenant's health status, and requires  
10 24 interdisciplinary review or revision of the service plan or  
10 25 both.

10 26 NEW SUBSECTION. 10A. "Substandard quality of services"  
10 27 means one or more insufficiencies related to the risk of  
10 28 immediate death or immediate physical injury to a tenant or a  
10 29 pattern of widespread physical harm to one or more tenants.

10 30 NEW SUBSECTION. 10B. "Substantial compliance" means a  
10 31 level of compliance with this chapter and rules adopted  
10 32 pursuant to this chapter such that any identified  
10 33 insufficiencies pose no greater risk to tenant health or  
10 34 safety than the potential for causing minimal harm.  
10 35 "Substantial compliance" constitutes compliance with the rules  
11 1 of this chapter.

11 2 Sec. 10. NEW SECTION. 231C.3A MONITORING == PROHIBITED  
11 3 CONFLICTS.

11 4 Persons responsible for conducting monitoring evaluations  
11 5 pursuant to this chapter shall be free of conflicts of  
11 6 interest. Any of the following circumstances constitutes a  
11 7 conflict of interest and disqualifies a monitor from  
11 8 conducting a monitoring evaluation of an assisted living  
11 9 program:

11 10 1. The monitor currently works, or within the past five  
11 11 years has worked, as an employee, a temporary employee at the  
11 12 program pursuant to an agreement with an employment agency, or  
11 13 an officer, consultant, or agent for the program to be  
11 14 evaluated.

11 15 2. The monitor has any financial interest or any ownership  
11 16 interest in the program. For the purposes of this paragraph,  
11 17 indirect ownership, such as through a broad-based mutual fund,  
11 18 does not constitute financial or ownership interest.

11 19 3. The monitor has an immediate family member who  
11 20 currently resides or previously resided in or received care  
11 21 from the program. An "immediate family member" means a  
11 22 husband or wife; natural or adoptive parent, child, or  
11 23 sibling; stepparent, stepchild, stepbrother, or stepsister;  
11 24 father-in-law, mother-in-law, son-in-law, daughter-in-law,  
11 25 brother-in-law, or sister-in-law; or grandparent or  
11 26 grandchild.

11 27 Sec. 11. Section 231C.10, subsection 1, paragraph f, Code  
11 28 2009, is amended by striking the paragraph and inserting in  
11 29 lieu thereof the following:

11 30 f. Failure to protect tenants from known dependent adult  
11 31 abuse as defined in section 235E.1.

11 32 Sec. 12. Section 231C.10, subsection 2, Code 2009, is  
11 33 amended to read as follows:

11 34 2. The department may as an alternative to denial,  
11 35 suspension, or revocation conditionally issue or continue a  
12 1 certificate dependent upon the performance by the assisted  
12 2 living program of reasonable conditions within a reasonable  
12 3 period of time as set by the department so as to permit the  
12 4 program to commence or continue the operation of the program  
12 5 pending ~~full~~ substantial compliance with this chapter or the  
12 6 rules adopted pursuant to this chapter. If the assisted  
12 7 living program does not make diligent efforts to comply with  
12 8 the conditions prescribed, the department may, under the  
12 9 proceedings prescribed by this chapter, suspend or revoke the  
12 10 certificate. An assisted living program shall not be operated  
12 11 on a conditional certificate for more than one year.

12 12 3. A denial, suspension, revocation, or issuance of a  
12 13 conditional certificate shall only be imposed upon a program  
12 14 when a program's insufficient practices directly impact the  
12 15 health, safety, and welfare of the tenants.

12 16 4. Any sanction imposed upon a program pursuant to this  
12 17 section shall be immediately removed once the program  
12 18 establishes it is in substantial compliance with this chapter  
12 19 and rules adopted pursuant to this chapter.

12 20 Sec. 13. NEW SECTION. 231C.10A INFORMAL CONFERENCE ON  
12 21 CONTESTED REGULATORY INSUFFICIENCIES OF A MONITORING  
12 22 EVALUATION OR COMPLAINT INVESTIGATION.

12 23 1. A program may request from the department, in writing,  
12 24 an informal conference to contest the regulatory  
12 25 insufficiencies of a monitoring evaluation or complaint  
12 26 investigation conducted pursuant to this chapter. The  
12 27 department shall transmit such request to the reviewer within  
12 28 ten working days after receipt of a request made under this  
12 29 section.

12 30 2. The program must specify in its written request each  
12 31 insufficiency that it disputes. The department shall provide  
12 32 an independent reviewer to whom the parties shall submit the  
12 33 issues raised who shall conduct the informal conference. The  
12 34 program and the department shall have the right to be  
12 35 represented by an attorney.

13 1 3. The reviewer appointed shall be wholly independent from  
13 2 the department and shall not be employed by the department nor  
13 3 be subject to employment review by the director of the  
13 4 department.

13 5 4. The selection of the reviewer shall be done in  
13 6 consultation with providers and advocates under this chapter.

13 7 5. The department and the program may present written  
13 8 evidence, depositions, and oral statements and arguments at  
13 9 the informal conference. Oral statements and arguments may be  
13 10 made by telephone.

13 11 6. Once a request for an informal conference is submitted,  
13 12 a hearing on the matter shall be held within ninety days if a  
13 13 state sanction is imposed.

13 14 7. Within ten working days of the close of the proceeding,  
13 15 the reviewer shall issue findings regarding each of the  
13 16 insufficiencies in dispute. The findings shall be one or more  
13 17 of the following:

13 18 a. Supported in full. The regulatory insufficiency is  
13 19 supported in full, with no deletion of findings and no change  
13 20 in the scope or severity assigned to the insufficiency.

13 21 b. Supported in substance. The regulatory insufficiency  
13 22 is supported, but one or more findings are deleted without any  
13 23 change in the scope or severity assigned to the insufficiency.

13 24 c. Regulatory insufficiency cited under incorrect  
13 25 regulation. The insufficiency is amended by moving it to the  
13 26 correct regulation.

13 27 d. Scope not supported. The regulatory insufficiency is  
13 28 amended through a change in the scope assigned to the  
13 29 insufficiency.

13 30 e. No insufficient practice. The regulatory insufficiency  
13 31 is dismissed because the findings did not support the  
13 32 insufficiency or the negative tenant outcome was unavoidable.

13 33 8. If the program does not desire to further contest an  
13 34 affirmed or modified insufficiency, it shall within five  
13 35 working days after the informal conference, or after receipt  
14 1 of the written findings of the reviewer, as the case may be,  
14 2 remedy any insufficiency, pay the applicable penalty, or

14 3 comply with any other department requirements.  
14 4 9. The authority of the director of the department to  
14 5 overrule informal conference decisions by a reviewer is as  
14 6 follows:

14 7 a. The director shall only reject or modify a finding of  
14 8 fact if the director first determines from a review of the  
14 9 entire record, and states with particularity in the order,  
14 10 that the findings of fact were clearly erroneous in view of  
14 11 the reliable, probative, and substantial evidence on the  
14 12 record as a whole, or that the informal conference did not  
14 13 comply with the essential requirements of the law.

14 14 b. The director shall only reject or modify the  
14 15 conclusions of law if the department first determines from a  
14 16 review of the entire record, and states with particularity in  
14 17 the order, that the conclusion of law was clearly erroneous in  
14 18 view of the reliable, probative, and substantial evidence on  
14 19 the record as a whole.

14 20 c. Rejection or modification of conclusions of law shall  
14 21 not form the basis for rejection or modification of the  
14 22 findings of fact.

14 23 Sec. 14. Section 231C.12, Code 2009, is amended to read as  
14 24 follows:

14 25 231C.12 DEPARTMENT NOTIFIED OF CASUALTIES.

14 26 The department shall be notified ~~within twenty-four hours~~  
14 27 no later than the next working day, by the most expeditious  
14 28 means available, of any accident causing ~~substantial serious~~  
14 29 injury as defined in section 702.18 or death, and any  
14 30 substantial fire or natural or other disaster occurring at or  
14 31 near an assisted living program.

14 32 Sec. 15. Section 231C.14, Code 2009, is amended to read as  
14 33 follows:

14 34 231C.14 CIVIL PENALTIES.

14 35 The department may establish by rule, in accordance with  
15 1 chapter 17A, civil penalties for the following violations by  
15 2 an assisted living program:

15 3 1. Noncompliance with any regulatory requirements which  
15 4 presents an imminent danger or a substantial probability of  
15 5 resultant death or ~~physical harm~~ serious injury, as defined in  
15 6 section 702.18, to a tenant.

15 7 2. Following receipt of notice from the department,  
15 8 continued failure or refusal to comply within a prescribed  
15 9 time frame with regulatory requirements that have a direct  
15 10 relationship to the health, safety, or security of program  
15 11 tenants.

15 12 3. Preventing or interfering with or attempting to impede  
15 13 in any way any duly authorized representative of the  
15 14 department in the lawful enforcement of this chapter or of the  
15 15 rules adopted pursuant to this chapter. As used in this  
15 16 subsection, "lawful enforcement" includes but is not limited  
15 17 to:

15 18 a. Contacting or interviewing any tenant of an assisted  
15 19 living program in private at any reasonable hour and without  
15 20 advance notice.

15 21 b. Examining any relevant records of an assisted living  
15 22 program.

15 23 c. Preserving evidence of any violation of this chapter or  
15 24 of the rules adopted pursuant to this chapter.

15 25 4. Admission restrictions may only be imposed when a  
15 26 program provides a substandard quality of services.

15 27 5. The department shall identify insufficient practices  
15 28 and provide consultation and the opportunity to correct such  
15 29 practices prior to assessing a civil penalty.

15 30 6. The department shall immediately rescind any admission  
15 31 restrictions imposed upon a program once the program  
15 32 establishes it is in substantial compliance.

15 33 7. If a program self-identifies and corrects an  
15 34 insufficient practice prior to the completion of the  
15 35 evaluation or investigation, a civil penalty shall not be  
16 1 imposed.

16 2 8. The department shall consider and apply all factors set  
16 3 out in the departmental rules relating to the imposition of  
16 4 civil penalties before determining the civil penalty to be  
16 5 imposed.

16 6 Sec. 16. Section 231C.16A, Code 2009, is amended by adding  
16 7 the following new subsection:

16 8 NEW SUBSECTION. 3. If medications are administered or  
16 9 stored by the program or the program provides for medication  
16 10 setup, the program shall ensure that the program's medication  
16 11 error rates are less than five percent and that there are no  
16 12 significant medication errors that directly impact any  
16 13 tenant's health.

16 14 Sec. 17. NEW SECTION. 231C.20 LIMITATION ON PENALTIES.

16 15 The department shall not identify duplicate regulatory  
16 16 insufficiencies or impose duplicate civil penalties for the  
16 17 same set of facts and circumstances. All monitoring revisits  
16 18 by the department shall review the program prospectively from  
16 19 the date of the plan of correction to determine compliance.

16 20 Sec. 18. Section 249A.19, Code 2009, is amended to read as  
16 21 follows:

16 22 249A.19 HEALTH CARE FACILITIES == PENALTY.

16 23 The department shall adopt rules pursuant to chapter 17A to  
16 24 assess and collect, with interest, a civil penalty for each  
16 25 day a health care facility which receives medical assistance  
16 26 reimbursements does not comply with the requirements of the  
16 27 federal Social Security Act, section 1919, as codified in 42  
16 28 U.S.C. } 1396r. A civil penalty shall not exceed the amount  
16 29 authorized under 42 C.F.R. } 488.438 for health care facility  
16 30 violations. Any moneys collected by the department pursuant  
16 31 to this section shall be applied to the protection of the  
16 32 health or property of the residents of the health care  
16 33 facilities which are determined by the state or by the federal  
16 34 centers for Medicare and Medicaid services to be out of  
16 35 compliance. The purposes for which the collected moneys shall  
17 1 be applied may include payment for the costs of relocation of  
17 2 residents to other facilities, maintenance or operation of a  
17 3 health care facility pending correction of deficiencies or  
17 4 closure of the facility, and reimbursing residents for  
17 5 personal funds lost. If a health care facility is assessed a  
17 6 civil penalty under this section, the health care facility  
17 7 shall not be assessed a penalty under section 135C.36 for ~~the~~  
~~17 8 same violation~~ a violation arising from the same inspection or  
17 9 any subsequent inspection within the same inspection cycle.

17 10 Sec. 19. Section 231C.8, Code 2009, is repealed.

17 11 EXPLANATION

17 12 This bill relates to health care facilities and assisted  
17 13 living programs, including violations, penalties, and  
17 14 inspections applicable to such facilities and programs.

17 15 Under current law, health care facilities are inspected by  
17 16 the department of inspections and appeals. There are three  
17 17 classes of violations set out in Code section 135C.36, with  
17 18 Class I being the most serious and Class III the least  
17 19 serious. The bill revises the criteria for the existing three  
17 20 classes and adds a fourth class.

17 21 Currently, a Class I violation presents an imminent danger  
17 22 or a substantial probability of resultant death or physical  
17 23 harm to the residents of the facility. The bill changes these  
17 24 elements to the occurrence of an actual death or serious  
17 25 injury caused by intentional or reckless disregard by the  
17 26 facility of the rules of the department. The penalty is  
17 27 changed from between \$2,000 and \$10,000 to not less than  
17 28 \$1,000 nor more than \$20,000 for each Class I violation.

17 29 Currently, a Class II violation has a direct or immediate  
17 30 relationship to the health, safety, or security of residents  
17 31 of a health care facility, but presents no imminent danger nor  
17 32 substantial probability of death or physical harm. The bill  
17 33 changes this to a violation which presents an imminent danger  
17 34 or substantial probability of resultant death or serious  
17 35 injury to the resident, and is a serious violation of the  
18 1 department's rules. The bill requires the department to adopt  
18 2 rules to establish the factors that will be considered in  
18 3 determining a serious violation. The penalty for a violation  
18 4 is raised from not less than \$100 nor more than \$500 to not  
18 5 less than \$1,000 nor more than \$20,000.

18 6 Currently, a Class III violation is any violation not  
18 7 classified as a Class I or a Class II violation. The bill  
18 8 provides that a Class III violation is one which has a direct  
18 9 or immediate relationship to the health, safety, or security  
18 10 of residents of a health care facility, and may present  
18 11 physical harm to them. The penalty for a Class III violation  
18 12 is not less than \$50 nor more than \$250.

18 13 The bill creates a Class IV violation, which is any  
18 14 violation other than a Class I, Class II, or Class III  
18 15 violation. A facility is not to be subject to a penalty for a  
18 16 Class IV violation except for failure to correct the violation  
18 17 within a reasonable time.

18 18 The bill revises Code section 135C.40 relating to issuance  
18 19 of citations and the time frames for issuing notices. That  
18 20 Code section currently empowers the director to issue a  
18 21 citation if the director determines that a facility is in  
18 22 violation of Code chapter 135C, or rules adopted by the  
18 23 department. The bill changes this discretion to a mandate  
18 24 that the director issue all statements of deficiencies,

18 25 including any state citations issued. The time period for  
18 26 issuing a statement or citation after an inspection is  
18 27 increased from five to 10 days. A revisit inspection must  
18 28 take place within 10 days after a plan of correction was  
18 29 submitted. If the department decides to seek federal  
18 30 remedies, the department must issue the statement of  
18 31 deficiencies within 24 hours of the date that the centers for  
18 32 Medicare and Medicaid services of the United States department  
18 33 of health and human services were notified.

18 34 Code section 135C.42 currently provides for an informal  
18 35 conference on a contested citation. The bill expands this  
19 1 conference into a simplified version of a contested case  
19 2 proceeding, presided over by a reviewer. The decision of this  
19 3 reviewer may be appealed by the facility in a contested case  
19 4 process. The director may reject the decision of the reviewer  
19 5 if the director first determines that the findings of fact  
19 6 were clearly erroneous in view of the reliable, probative, and  
19 7 substantial evidence on the record as a whole, or that the  
19 8 informal conference did not comply with the essential  
19 9 requirements of the law. The director may also reject the  
19 10 decision of the reviewer if the director first determines that  
19 11 the conclusion of law was clearly erroneous in view of the  
19 12 reliable, probative, and substantial evidence on the record as  
19 13 a whole and the relevant case law.

19 14 The bill adds new Code section 135C.16A, relating to  
19 15 conflicts of interest by state inspectors. An inspector is  
19 16 disqualified from conducting a particular inspection if:

19 17 1. The inspector has within the past five years worked for  
19 18 the facility to be inspected.

19 19 2. The inspector has any financial interest or any  
19 20 ownership interest in the facility.

19 21 3. The inspector has an immediate family member who  
19 22 currently or previously resided or received care with the  
19 23 facility.

19 24 The bill also revises inspection and compliance  
19 25 requirements for assisted living programs. Code section  
19 26 231C.2 is revised, adding definitions for the terms "change in  
19 27 condition", "substandard quality of services", and  
19 28 "substantial compliance". The term "change in condition" is  
19 29 not used in Code chapter 231C, but is used in administrative  
19 30 rules relating to recordkeeping and reporting. Revisions to  
19 31 Code section 231C.10 provide that any sanction imposed shall  
19 32 be immediately removed once the program comes into substantial  
19 33 compliance with the rules. The bill then amends Code section  
19 34 231C.14 to provide that admission restrictions may only be  
19 35 imposed when a program provides a substandard quality of  
20 1 services. The bill also amends Code section 231C.10 to  
20 2 provide that a denial, suspension, revocation, or conditional  
20 3 certificate shall only be imposed upon a program when a  
20 4 program's insufficient practices directly impact the health,  
20 5 safety, and welfare of the tenants.

20 6 New Code section 231C.10A provides for an informal  
20 7 conference on contested citations. This provision is similar  
20 8 to the revision to Code section 135C.42 in the bill. It  
20 9 replaces language currently in Code section 231C.8.

20 10 The bill creates new Code section 231C.3A, relating to  
20 11 prohibited conflicts of interest. It is similar to new Code  
20 12 section 135C.16A, created in the bill.

20 13 Code section 249A.19 establishes a civil penalty for each  
20 14 day a health care facility which receives medical assistance  
20 15 does not comply with federal requirements. The bill provides  
20 16 that a penalty assessed under this Code section precludes the  
20 17 imposition of a penalty under Code section 135C.36 for a  
20 18 violation arising from the same inspection or any subsequent  
20 19 inspection within the same inspection cycle.

20 20 LSB 1570XC 83

20 21 jr/nh/5